# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

#### COMPLETE TITLE OF CASE

COMMUNITY BANK OF RAYMORE,

Respondent,

v.

PATTERSON OIL CO., INC.,

Appellant.

#### **DOCKET NUMBER WD77275**

## MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DATE:** March 3, 2015

#### **APPEAL FROM**

The Circuit Court of Cass County, Missouri The Honorable Meryl L. Lange, Judge

#### **JUDGES**

Division I: Martin, P.J., and Newton and Pfeiffer, JJ.

CONCURRING.

#### **ATTORNEYS**

Greer S. Lang and Justin Nichols Kansas City, MO

Attorneys for Respondent,

John M. Duggan and Deron A. Anliker Overland Park, KS

Attorneys for Appellant.



### MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

COMMUNITI BANK OF KATMOKE,	,		
	)		
Respondent,	)		
v.	)	<b>OPINION FILED:</b>	
	)	March 3, 2015	
PATTERSON OIL CO., INC.,	)		
	)		
Appellant.	)		
WD77275			C

COMMINITY BANK OF DAVMODE

**Cass County** 

Cynthia L. Martin, Presiding Judge, and Thomas H. **Before Division I Judges:** Newton and Mark D. Pfeiffer, Judges

Patterson Oil Co., Inc. ("Patterson Oil") appeals the judgment of the Circuit Court of Cass County, Missouri, Associate Circuit Division ("trial court"), granting summary judgment to the Community Bank of Raymore ("Bank") on the issue of right to possession in Bank's unlawful detainer action, and entering judgment on the jury verdict for damages in favor of Bank.

Patterson Oil raises five points of error, asserting that the trial court erred:

- 1. in granting summary judgment (for possession) in Bank's favor because Bank did not prove the authenticity of the deed of trust under which the foreclosure proceedings occurred;
- 2. in granting summary judgment (for possession) in favor of Bank because Bank did not prove that its claimed right to possession was superior to Patterson Oil's right of possession;
- 3. in denying its motions for directed verdict and motion for JNOV because Bank failed to present substantial and competent evidence regarding its claimed damages;
- 4. by instructing that the jury "must" award damages for "the loss of rents and profits" without conditioning the award on a finding "in favor of plaintiff";

5. by failing to instruct the jury how it should measure lost "rents and profits," thereby erroneously allowing the jury a roving commission.

#### AFFIRMED.

#### **Division I holds:**

- 1. A defendant cannot assert wrongful foreclosure as a defense to an unlawful detainer action.
- 2. The outcome of an unlawful detainer action does not turn on which party is able to demonstrate superior title.
- 3. Damages for rents and profits may be measured by the reasonable rental value of the rented premises during the period of unlawful detention, and the amount of damages calculated by the jury was within the range of evidence presented by the parties.
- 4. The trial court had already determined right to possession of the property in favor of Bank when it granted summary judgment in Bank's favor; therefore, there was no need for the jury to make the same finding.
- 5. The words "rents and profits" are commonly used and readily understandable and provided the jury with sufficient instruction on this element of Bank's claim. The instruction was not a roving commission because it did not assume any disputed facts or submit abstract legal questions to the jury.

Opinion by: Mark D. Pfeiffer, Judge
March 3, 2015

\* \* \* \* \* \* \* \* \* \* \* \*

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.